IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.W.P. No.472 of 2006
Date of decision : 23.1.2007

Gurmail Singh

....Petitioner

Versus

State of Punjab & others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

...

Present : Mr. V.K.Jindal, Advocate
for the petitioner.

Mr. B.S.Sewak, DAG, Punjab
for the respondents.

...

MAHESH GROVER, J.(Oral)

This is a petition under Article 226 of the Constitution of India read with the provisions of Section 482 of the Code of Criminal Procedure for issuance of a writ, order or direction to the respondents to consider the case of the petitioner for grant of remissions as available to him under the relevant instructions issued by the State of Punjab from time to time.

The petitioner was convicted by the court of Addl. Sessions Judge, Ludhiana on 11.12.1989 in offences under Sections 307/326/325/148/149 IPC registered vide FIR No.47 dated 30.5.1988. The petitioner preferred an appeal against the same which was admitted and he was directed to be released on bail on 12.1.1990. The said appeal was dismissed by this Court on 5.8.2003 and the

conviction and sentence awarded by the Court of Addl. Sessions Judge was maintained.

Accordingly the petitioner surrendered before the jail authorities on 5.3.2004 and is undergoing imprisonment.

The State of Punjab has issued instructions which have been attached as Annexures P-3 to P-11 which are similar in content but have been issued from time to time. Reference to one of the instructions Annexure P-3 reveals that under clause 'B', dealing with special remission, the following criteria has been laid down :-

"B. Special Remission

The Governor of Punjab is further pleased to allow special remission to the prisoner on the following scales :-

i) Prisoners sentenced to imprisonment for more than 10 years or for life	1 year
ii) Prisoners undergoing sentence of more than 5 years and upto 10 years imprisonment.	8 months
iii) Prisoners undergoing sentence of more than 2 years and upto 5 years imprisonment	6 months
iv) Prisoners undergoing sentence of more than 1 year and upto 2 years imprisonment.	4 months
v) Prisoners undergoing sentence upto 1 year imprisonment.	2 months

The special remission is subject to the following conditions :-

i. The prisoners who are on parole/furlough shall be allowed the benefit only in case they report back in jail in

time.

ii. The prisoners who have been released on bail shall be allowed the benefit only if they surrender in jail within 15 days of the receipt of notice in this regard from the Superintendent of the jail concerned from where they had been released on bail."

It is pertinent to mention here that the above stated criteria is almost similar in all the notifications with a slight variation in the scale of remissions to be granted to the convicts.

It has been contended by the learned counsel for the petitioner with specific reference to condition No.(ii) to say that a prisoner who has been released on bail shall also be allowed the benefit if he surrenders in jail within 15 days of the receipt of notice from the Superintendent of the jail from where he has been released on bail.

The petitioner, who had surrendered before the jail authorities on 5.3.2004, contended that he is covered by the clause aforesaid even though no notice was issued by the jail authorities as stipulated in the instructions and since he had surrendered of his own, he was entitled to the remissions during the period for which he remained on bail. He further contended that the petitioner has since undergone substantive sentence of 6 years and 6 months out of a total of 7 years awarded to him. In support of his contention, the learned counsel for the petitioner has placed reliance on a judgment of the Hon'ble Supreme Court of India reported in AIR 2001 SC 3703 – Joginder Singh versus State of Punjab and others.

The factual and legal position has not been controverted by the learned counsel for the State. He, however, contends that in view of the observations of the Apex Court the benefit of remissions during the period the petitioner remained on bail cannot be granted to him.

I have heard the learned counsel for the parties and have perused the record.

While dealing with the instructions issued by the State of Punjab from time to time the Hon'ble Supreme Court observed as under :

> "10. With respect, we are unable to agree with the learned counsel for the said respondents. In other words, acceptance of this argument in our opinion, would reduce the criminal justice system to mockery as has been said by this Court in Nauratta Singh's case (supra). In the cases cited by the appellant, this Court has categorically held that there is substantial difference between the words "parole" and "furlough" on one hand and the expression "bail" on the other. These judgments have also held that persons who are enlarged on bail cannot claim the benefit of the period during which they were on bail for the purpose of counting the period of sentence already undergone to apply the remission given by the government. In view of this clear enunciation of law, in our opinion, even by the inclusion of the word "bail" in the notification of the Punjab Government an

accused who has always remained on bail or has not served the substantial part of his sentence cannot take advantage of the remission notification."

A perusal of the instructions clearly reveals that there is no ambiguity in so far as the provisions contained therein are concerned. The remissions are to be granted even in a case where the convict has remained on bail. The only question that is to be determined is as to whether the convict has undergone a substantive portion of his sentence during his period of incarceration.

Concededly the petitioner has completed 6 years and 6 months approximately out of the total period of 7 years which is reflective of his having undergone a substantial portion of his sentence. His case cannot be equated with the case of the persons who have not spent any period in custody and have remained on bail. In view of this, the contention of the learned counsel for the petitioner is justified that his case ought to have been considered in view of the instructions Annexure P-3.

For the reasons aforesaid, the present petition is allowed with a direction to the respondents to consider the case of the petitioner in the light of the observations made above and dispose off his case within a period of two weeks from today.

Disposed of accordingly.

23.1.2007 (MAHESH GROVER)
JUDGE

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